the consideration be merely formal. On the other hand, without denying that the jurisdiction in such cases is discretionary, still it is true that this discretion is not arbitrary. *Harrison* v. *Town*, 17 Mo. 237. An apparently conclusive argument against a rule allowing equity to refuse specific performance on the ground of mere inadequacy of consideration is found in the practical impossibility of the court's weighing the numerous motives which may have actuated the parties when making the agreement. *Griffith* v. *Spratley*, 1 Cox 383. The problem of deciding just what is or what is not adequate consideration is too complicated. Were the courts to attempt this the freedom of contract would be greatly and unjustifiably limited.

How an Equity Rule has Fared in Mortgage Law. — Courts must frequently decide between rival equitable claims upon the same property. In this necessity it is natural that they follow the rule of preferring the equity which first attached. An exception often incorporated into the rule is also natural: that an equity less meritorious than a later one must be postponed, the criterion of merit being simply openness and fairness of dealing. *Rice* v. *Rice*, 2 Drew. 73. This exception is apparently the only one generally recognized.

Two established propositions in American mortgage law, however, are to be accounted for only under some other, special exception. The first proposition is that the holder in due course of a mortgage-note has the benefit of the security, though the mortgagee still retains the title thereof, and though the mortgagor before the note was indorsed was entitled in equity to have the mortgage cancelled. *Carpenter* v. *Longan*, 16 Wall. 271. A strong argument for this doctrine is that the mortgagor's property is simply made to satisfy a note to which the mortgagor has lost his defence, and that giving the holder of the note this special remedy upon an undoubted right does not substantially prejudice the maker. The second proposition of the two is that where one, by assignment or indorsement, becomes *dominus* of a mortgage-debt free from equities of third persons, the equity he acquires against the mortgagee's security-interest is also free from any equity that has attached to that interest in the mortgagee's hands. *Himrod* v. *Gilman*, 147 Ill. 293. It is noteworthy that such a latent, preëxisting equity could be recognized at most only if the purchaser of the debt chose to foreclose; for he might collect in any other way and keep the proceeds, and the mortgagor, on paying the one legally entitled to collect, might assert his own paramount equity to have the security back. The rule of *Himrod* v. *Gilman* simplifies, and is not unfair. Considered as an exception to the usual rule of priority, it has a common principle with *Carpenter* v. *Longan*, *supra*. Among equitable claimants against a mortgagee's interest, one who has lost the right on which his equity as a matter of substance depended is disregarded in favor of those subsequent in time but superior in power.

A recent California decision on a mortgage transaction violates the rule even so modified. A contractor's claim for constructing a building was subject, by statute, to an equitable lien in favor of material-men. He assigned this contract claim to secure his note. The assignee then assigned the claim to a dummy to hold for him, and indorsed the note to a holder in due course who did not know, although his indorser did,

that certain material-men were unpaid. The money due the contractor the court applied on the note in preference to the material-men's charges. *Perry* v. *Parrott*, 67 Pac. Rep. 144. Here the dummy held the legal power over the contract claim. Since that claim was originally mortgaged subject to the material-men's incumbrance, their equity was superior to the payee's and necessarily antedated that asserted by the indorsee. No reason for distinguishing the subjective merits of the claimants suggests itself, and, the security aside, the principal claims were of equal substantial validity. The prior equity should have prevailed, and, on similar facts, such was the express decision in *Linville* v. *Savage*, 58 Mo. 248. Only two other cases have been found directly in point. *Mott* v. *Clark*, 9 Pa. St. 399; *Van Burkleo* v. *Southwestern Mfg. Co.*, 39 S. W. Rep. 1085 (Tex.). They support the principal decision, not considering the fundamental equity rule and apparently over-generalizing the exceptions to that rule as defined above.

DEVOLUTION OF REAL PROPERTY OF A DISSOLVED CORPORATION. — An interesting question is presented by a recent decision of the Texas Supreme Court. A Louisiana corporation owned land in Texas. Though owing no debts it was dissolved by the voluntary act of the stockholders, three of whom were appointed commissioners to settle the corporate affairs. These three brought an action of trespass in Texas to try title to the land belonging to the corporation. It was held that though their appointment was not evidenced by such an instrument as was required for the conveyance of land in Texas, yet they could maintain the action in their character as stockholders, since on the dissolution of the corporation the title passed to the stockholders as tenants in common. *Baldwin* v. *Johnson*, 65 S. W. Rep. 171.

The common law rule has been generally stated to be that land of a dissolved corporation reverts to the grantor. 2 MOR., CORP., § 1031. A reference to the history of the law and to the only decided case on the point shows, however, that if the stockholders cannot claim, the property escheats, instead of reverting to the grantor. GRAY, PERP., §§ 44–51; *Johnson* v. *Norway*, Winch 37. Personal property, according to the generally stated common law rule, also goes to the sovereign as *bona vacantia*. *In re Higginson and Dean*, [1899] 1 Q. B. 325. These questions, however, have rarely arisen for decision, and no American case squarely in point has been found. Texas like many other states has a statute providing that if a person dies without heirs the property shall escheat to the state. Construing this statute, together with the statutes as to descent and those expressly providing for the appointment of receivers and trustees for dissolved Texas corporations, it seems clear that it was only meant to apply to natural persons. The solution of the question to whom the property of the dissolved corporation should go depends, therefore, upon common law principles. And this is true even though the statute applies to artificial persons; for if the stockholders can be held to succeed to the corporate property, the statute obviously has no application.

The American courts have been very alert in imposing a trust on the property of dissolved corporations for the benefit of creditors and shareholders. *Bacon* v. *Robertson*, 18 How. 480. Such a trust, while working